IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : March 07, 2007

Puran Singh

....Petitioner

versus

State of Punjab ....Respondent

Coram: Hon'ble Mr. Justice Virender Singh

Present : Mr. H.N.S. Gill, Advocate, for the petitioner
Mr.B.S.Sewak, DAG, Punjab

Petitioner Puran Singh is the complainant of FIR No. 83 dated 11.5.2006, Annexure P/1 registered at Police Station City Kapurthala under sections 382/34 IPC, in which one one Sharanjit whose parentage is not known and shown to be originally resident of UP but at the time of the alleged occurrence was residing at Railway Station, Kapurthala was booked in this case. He was admittedly a juvenile at the time of alleged occurrence. The allegations against him are that he had picked up the bag of the petitioner containing Rs 15 lacs on 11.5.2006 from his car by adverting his

attention. The petitioner had withdrawn that amount from State Bank of Patiala, Kapurthala. The investigation was conducted by Inspector Gurmej Singh of the concerned Police Station and ultimately aforesaid Sharanjit was arrested. He was subsequently released on bail by the Principal Magistrate, Juvenile Board, Ludhiana as one Harcharan Kaur wife of Harbhajan Singh resident of Janta Colony, Rahon Road, Ludhiana stood surety for him. The surety bond was duly verified by the Sarpanch. The admitted position is that the accused is not appearing before the concerned court.

The petitioner moved an application for releasing the aforesaid amount (Rs 15 lacs) on sapurdari which were taken into custody by the police from the accused. The report was called from the concerned quarters and ultimately vide order dated 26.5.2006 passed by Principal Magistrate, Juvenile Board, application for sapurdari was allowed in the sum of Rs 20 lacs with one surety in the like amount with an undertaking to be given by the petitioner to the effect that he would produce the currency note on each and every date of hearing. The other condition imposed was that he would not use the same during the pendency of the case and would keep the notes in intact condition.

The petitioner being aggrieved by the said order filed a revision petition before the learned Sessions Judge, Ludhiana for waiving off those conditions. The learned Sessions Judge, vide impugned order dated 9.8.2006 set aside the order of the Principal Magistrate dated 26.5.2006 and

remanded the case to Principal Magistrate, Juvenile Board for deciding the same afresh after recording the statement of the accused on the following facts:-

1. As to whether he (accused) will dispute the identity of the case property i.e. currency notes during the trial or not ?

2. As to whether he claims the case property or not ?

Note satisfied with the said order, the petitioner has moved this Court through the instant petition under section 482 Cr.P.C. for appropriate directions.

The instant petition was adjourned on request of the learned State counsel to know the latest status of the trial and after verifying it from the concerned quarters, he submits that till date, the State agency has not been able to nab the accused as his address is not proper. He, however, states that proceedings against the surety have already been initiated.

The learned State counsel very fairly states that despite best efforts the prosecution agency has not been able to arrest the accused and that is the reason that the proceedings have been stalled before the Principal Magistrate.

Mr. Gill submits that the petitioner is a businessman and he is the one who was robbed of Rs 15 lacs which were ultimately recovered from the accused. The trial court (Principal Magistrate) had ordered the release of currency notes by imposing certain conditions for which the

petitioner had to file a revision petition. The learned Sessions Judge instead of taking a liberal view, rather remanded the case to the trial court for recording the statement of the accused with regard to the identity of the case property and his claim if any over the same. According to Mr. Gill, the accused is not appearing before the court primarily on account of the fault of the police who had not recorded his complete address. It appears that even in near future there is no chance of the accused being arrested. Initiation of the proceedings against the surety would not be of any consequence. The petitioner being businessman is in dire need of money and since the entire amount of Rs 15 lacs (case property of the present case) is being kept with the prosecution agency it has virtually put his business to a halt.

Mr. Gill then submits that the photostat copies of the currency notes can be kept on record and the petitioner is ready to bear the expenses for the same. In the alternative some other method can be evolved for the purpose of fixing the identity. The petitioner is otherwise ready to give any bank guarantee to the court at the time of furnishing sapurdarinama or any reasonable condition which the court deems proper may also be imposed before preparing the inventory and releasing the amount. In that eventuality no dispute can be raised with regard to the identity of the case property. In any case keeping the money with the prosecution till the conclusion of the trial which is not likely in near future in the light of the

aforesaid facts, would be unjust. Therefore, the conditions imposed by the learned Principal Magistrate in its order dated 26.5.2006 and further the view taken by the learned revisional court in order dated 8.8.2006 are liable to be set aside/modified.

Mr. Gill in support of his contentions relies upon a judgment of Delhi High Court rendered in **M/s Cox and Kings Forex Services vs State and others** 2002(2) RCR (Criminal) 324.

The learned State counsel has not been able to oppose the prayer of Mr. Gill primarily on the ground that the prosecution had also not raised any objection before the Principal Magistrate.

I find substance in the submissions advanced by Mr. Gill. No doubt in **M/s Cox and Kings**'s case (supra) relied upon by Mr. Gill, where the dispute arose about the sapurdari of Rs 35 lacs, the accused persons had made statements that they would not challenge the identity of the currency notes. The condition imposed was that the original currency notes would be produced in the court as and when required. The Hon'ble Delhi High Court considered the said conditions as un-necessary in view of the fact that photostat copies of the recovery notes were taken on record. In the case in hand, no such statement of the accused has been recorded with regard to the identity of the currency notes (Rs 15 lacs). To my mind this exercise is not possible in near future as the accused has not been arrested by the prosecution agency till date. There appears to be no likelihood of his

being arrested even in near future for the reason that the prosecution agency is not in possession of his complete address. In this eventuality, it is not possible to record the statement of the accused with regard to the identity of the currency notes. It is generally noticed that the accused never admits that the recovery was effected from him except under exceptional circumstances. In the case in hand, the accused who hails from U.P. and was admittedly a juvenile would not take this plea in his defence. Therefore, it would be most un-fair if the amount belonging to the petitioner which is very huge (Rs 15 lacs) is not returned to him on sapurdari for want of recording of statement of the accused viz-a-viz the identity. I, therefore, do not subscribe the view taken by the learned Sessions Judge in this regard. At the same time it can very well be understood that the accused being a juvenile and hailing from U.P. would not be claiming the case property, and, therefore, in my view, there is no necessity of recording his statement in this regard. Order dated 6.12.2006 vide which the application of the petitioner after remand stands dismissed indicates that the directions of the learned Sessions Judge could not be complied with as the juvenile was not appearing before the court. No doubt liberty has been granted to the petitioner to apply for sapurdari after the presence of the juvenile before the Board but this would amount to unnecessary harassment to the petitioner.

In view of above, the order dated 8.8.2006 passed by the learned Sessions Judge, Ludhiana in criminal revision filed by the petitioner

deserves to be set aside. Ordered accordingly.

Adverting to the conditions imposed by Principal Magistrate in its order dated 26.5.2006, to my mind they are equally un-reasonable and unncessary in the case in hand. The same are liable to be waived off with a direction to the prosecution agency to keep a set of photostat copies of the currency notes by making an inventory in this regard. The said inventory thereafter shall be signed by the learned trial court (Principal Magistrate). The petitioner may be asked to bear the expenses of this exercise. After all these formalities are completed, the petitioner shall be at liberty to utilize the aforesaid amount (original notes) and they need not to be produced before the trial court at subsequent stage after the accused (juvenile) puts in appearance. At the time of furnishing sapurdarinama by the petitioner, the learned trial court may also impose the condition of furnishing bank guarantee by the petitioner which shall continue unless ordered otherwise. Ordered accordingly.

The net result is that the instant petition stands allowed in the aforesaid terms.

(Virender Singh)
Judge

March 07, 2007
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